Supreme Court, U.S.
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In the

SUPREME COURT OF THE UNITED STATES

Brian Hilvety

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for
the Seventh Circuit

WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is the 1040 request "U.S. Individual Income Tax Return" with OMB # 1545-0074 for Calender Year 2003 an information collection request subject to the Paperwork Reduction Act of 1995 or not? If not, how could that be?

The decision by the 7th Circuit in *United States v. Salberg*, 969 F. 2d 379, 384 (1992) conflicts with this Court in *Dole v. United Steelworkers*, 494 U.S. 26 (1990) as well as the D.C. Circuit's construction and decision in *Saco River Cellular, Inc. v. FCC*, 133 F.3d 25, 31 (D.C. Cir. 1998).

The Panel decision conflicts with this Court's holding in *CIR v. Lane-Wells Co.*, 321 U.S. 219, 223 (1944) which held requirement to provide information to the Internal Revenue Service on a 1040 request is a "regulatory requirement" by saying "Congress has given discretion to the Commissioner to prescribe **by regulation forms** of returns and has made it the duty of the taxpayer to comply."

The Panel decision also conflicts with this Court's decision in *U.S. v. Hubbell*, 530 U.S. 27, 35 (2000) which held "incriminating evidence may be the by-product of obedience to a ***regulatory requirement***, such as filing an income tax return,.."

2. Is the United States Tax Court a "Court" within the meaning and application of the term "penalty" defined specifically by Congress pursuant to 44 U.S.C. § 3502(14)?

3. Is a Petition filed in the United States Tax Court a "judicial action" pursuant to 44 U.S.C. § 3512(b)(1995)?

4. When the Commissioner of Internal Revenue makes a claim of penalties, including interest as a penalty within a Notice of Deficiency for failure to provide information on the 1040 request, against Petitioner, does Petitioner have a right to raise the public protection provision, 44 U.S.C. § 3512(b)(1995) in defense to those penalty claims within the United States Tax Court? Isn't this what 26 U.S.C. § 7491(c) means?

The decision by the 7th Circuit to the contrary conflicts with the 10th Circuit's recent decision in *Pond v. CIR*, T.C. Memo 2005-255, WL 18928 decided 10911-02 (10th.1-4-07).

The decision by the 7th Circuit to uphold the imposition of penalties and interest claims made by the Commissioner of Internal Revenue against Petitioner, including frivolous penalties for raising the protection provided by 44 U.S.C. § 3512, pursuant to 26 U.S.C. § 6673, conflicts with this Court's ruling in *Dole v. United Steelworkers*, 494 U.S. 26 (1990).

5. Is the Sanction of $ 8,000.00 imposed by the Panel against Petitioner a "penalty" subject to the Paperwork Reduction Act of 1995 and its public protection provision as all other penalties defined under 44 U.S.C. § 3512, since it was imposed due to Petitioner raising the public protection provision both to the Tax Court and on appeal to the 7th Circuit?

PARTIES TO THE PROCEEDING

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Brian Hilvety respectfully requests that a writ of certiorari be issued to consider, review and reverse the judgment and order of the United States Court of Appeals for the Seventh Circuit in this case and which should be to reverse the decision by the United States Tax Court.

OPINIONS BELOW

The Decision of the Tax Court dated November 16, 2005.

The Order by Circuit Justice Michael S. Kanne, Ilana Diamond Rovner, and Diane S. Sykes, was issued on February 14, 2007.

The Order to deny rehearing by the original panel was issued June 15, 2007.

The Order denying rehearing en banc was also reported June 15, 2007.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was final June 15, 2007.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTION, REGULATIONS AND STATUTES

It is hard to imagine a greater constitutional due process deprivation than not being allowed in any Court to raise the public protection Congress directed to be raised in "any Court" regarding penalties pursuant to 44 U.S.C. § 3512(b)(1995)..

The Statutory Provision(s) at issue under Title 44, United States Code begins with § 3502(14)(1995) defining penalty to include " any Court"; and in § 3506(c)(1)(B)(1995) setting forth criteria required on any request for information by any Federal Agency to any person; and § 3512(a) & (b)(1995) providing warning and how protection can be raised and that "no person shall be subject to any penalty";

Under Title 26, United States Code § 6011, phrase "when required by regulation"; and under § 6012 phrase "make a return"; and § 6651(a)(1), § 6654 and § 6673, the penalties at issue; and under § 7203 the 7th Circuit cites to this section incorrectly; and § 7491(c) .

In 5 CFR 1320.6(e) at issue is its identity of 26 U.S.C. § 6011.

STATEMENT OF THE CASE

Petitioner, Brian L. Hilvety, for the calender year 2003, did not provide any income tax information to the Internal Revenue Service on its 1040 request with OMB # 1545-0074 on or before April 15, 2004. Petitioner's employer did however report wages paid to Petitioner on Form W-2 to the Internal Revenue Service with minimal withholding. On May 24, 2005, a Mr. Parizek, with I.D. # 29-61699, on behalf of the Secretary of Treasury, issued a Statutory Notice of Deficiency (90 day letter) to Petitioner claiming a deficiency $ 3419.00 and additionally claimed pursuant to 26 U.S.C. § 6651(a)(1) "penalties" in the amount of $ 947.80. Interest was also claimed in the amount of $ 199.15 "computed to April 24, 2005". This made the total amount claimed due from Petitioner by the Commissioner of the Internal Revenue $ 4,531.95 (adjusted $ 34.00 for prepayment credits).

Petitioner timely filed a Petition in the United States Tax Court raising a Paperwork Reduction Act defense in opposing the Commissioner's claims Petitioner was required to provide timely answers to the Secretary's questions on its 1040 request for Calender year 2003 because that request was bootleg and out of compliance with the Paperwork Reduction Act of 1995.

The Commissioner moved to dismiss Petitioner's Petition for failure to state a claim and that the Paperwork Reduction Act

of 1995 was a frivolous defense against the Secretary's a claims of penalties, and interest as a penalty, claimed within the Secretary's Notice of Deficiency dated May 24, 2005.

On November 16, 2005 a final decision was entered against Petitioner along with granting the Commissioner's Motion for Sanctions pursuant to 26 U.S.C. § 6673 for making a Paperwork Reduction Act defense finding such Public Protection claim frivolous over Petitioner's opposition and objections.

On February 7, 2006, Petitioner timely filed his notice of appeal to the United States Court of Appeals for the Seventh Circuit with the Tax Court. On February 14, 2007, a final decision was entered by a panel of three Circuit Judges upholding the decision of the Tax Court and imposing an additional $ 8,000.00 penalty against Petitioner for raising and maintaining on appeal his Paperwork Reduction Act defense to the Secretary's claims of penalties and interest as a penalty. Petitioner timely moved for rehearing and on June 15, 2007, that Petition was denied as well as suggestion for rehearing en banc.

This Petition is timely.

ARGUMENT SUPPORTING GRANTING OF WRIT

1. The 1040 request "U.S. Individual Income Tax Return" with OMB # 1545-0074 for year 2003 is an information collection request subject to the Paperwork Reduction Act of 1995 and its public protection provision.

The decision by the Panel conflicts with this Court's decision in *Dole v. United Steelworkers*, 494 U.S. 26 (1990) which held tax forms were "typical information collection requests" subject to the Paperwork Reduction Act. Id. at 32-33

The decision by the 7th Circuit in *United States v. Salberg*, 969 F. 2d 379, 384 (1992) relied upon by the panel to support their additional subjecting penalties of $ 8,000.00 against Petitioner, held that the 1040 request was a statutory command and thus not subject to the Paperwork Reduction Act and its public protection provision.

The decision in *Salberg* is also in direct conflict with this Court's decision in *CIR v. Lane-Wells Co.*, 321 U.S. 219, 223 (1944) which stated "Congress has given discretion to the Commissioner to prescribe **by regulation forms** of returns and has made it the duty of the taxpayer to comply." And again restated in another context in *U.S. v. Hubbell*, 530 U.S. 27, 35 (2000) ("incriminating evidence may be the by-product of obedience to a ***regulatory requirement***, such as filing an income tax return,..")

This Court also, when announcing the exception to the general definition of willfulness in criminal tax cases, said the "proliferation of statutes **and regulations** has sometimes made it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by the tax laws." *Cheek v. U.S.*, 498 U.S. 192, 199-200 (1991); See also *U.S. v. Mersky*, 361 U.S. 431, 437 (1960)("An administrative regulation, of course, is not a 'statute.'")

The Panel's citations to other Circuits, as addressed in *Salberg,* conflicts with those Courts that have decided to ignore this Court's routine position on the regulatory requirement and its decision in *Dole* generally. In *Salberg*, the 7th Circuit held it was section "7203" that required *Salberg* to provide answers to the IRS on its 1040 request. This theory conflicts with cases cited by the panel as in *U.S. v. Neff*, 954 F.2d 698,700 (11th Cir. 1992)("section 6012"); and *U.S. v. Hicks,* 947 F.2d 1356, 1359 (9th Cir. 1990)("6012 and 7203"); and *U.S. v. Dawes*, 951 F.2d at 1193 (10th 1991)(10th did not "subscribe to statutory origin theory" and premised that decision by saying "as long as the 1040 Form complies with the act, nothing more is required." Id). See also *U.S. v. Collins*, 920 F.2d 619, fn 12(10th Cir. 1990)holding PRA does apply to Tax Forms as held in *Dole*)

The Office of Management and Budget directs in Title 5 CFR 1320.6 to section 6011 of Title 26 regarding IRS requests

and this section begins "when required by regulation prescribed by the Secretary..."

Even if there was a "theory" which one is it? Is it section 7203, both 6012 and 7203, section 6012 by itself, section 6011, or as the Fifth Circuit in *U.S. v. Kerwin*, 945 F.2d 92(5th Cir. 1991) held the requirement derived from the "statutes."

The decision by the Panel also conflicts with the D.C. Circuit's construction of the Paperwork Reduction Act of 1995 in its decision in *Saco River Cellular, Inc. v. FCC*, 133 F.3d 25, 31 (D.C. Cir. 1998) which held the protection provided by section 3512 precluded by "5 C.F.R. 1320.6(e)" "'does not extend to situations in which a statute authorizes, or directs, an agency to impose a collection of information on persons, and the agency does so.' Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act, 60 Fed. Reg. 30438, 30441 (1995)."

Two of the three Circuit Justices in Petitioner's Appeal also decided the case of *USA v. Robert Lawrence* on March 1, 2007, 06-3205 (7th Cir.) in which the Government dismissed with prejudice a criminal indictment just prior to trial after being made aware again of the good faith defense that Lawrence relied upon the Commissioner, Congress and this Court, for his defense to the tax evasion and willful failure to file Form 1040 charges alleged in the indictment against him. Lawrence's Attorney

moved for fees and costs arguing the Government Attorney should have known the Form 1040 did not comply with the Paperwork Reduction Act of 1995. The Panel in that decision stated "Lawrence conceded at oral argument that no case from this circuit establishes such a proposition, and in fact Lawrence cites to no caselaw from any jurisdiction that so holds."

The panel went on to cite the same cases cited to Petitioner such as *Salberge*, 969 F.2d 379 (7th Cir. 1992); *Neff*, 954 F. 2d 698 (11th Cir. 1992); *Kerwin*, 945 F.2d 92 (5th Cir. 1991); *Hicks*, 947 F. 2d 1356 (9th cir. 1991); and *Wunder*, 919 F. 2d 34 (6th Cir. 1990). It is important to notice what the 7th Circuit omitted in its decision after holding "no caselaw" and "no case from this circuit" directive. No mention of *Dole*, S.Ct, (1990). No mention of *Collins*, 10th Cir, 1990. No mention of *Dawes*, 10th Cir. 1991. No mention of *Holden*, 8th Cir. 1992. No mention of *Saco River Cellular*, D.C. Cir. 1998.

There is no specific provision in Title 26 which directs a 1040 request be filed with the Internal Revenue Service. The 1040 request is a regulatory request by the Internal Revenue Service and as such is clearly subject to the Paperwork Reduction Act of 1995 (and 1980).

This Court should reverse the 7th Circuit's decision to ignore the *Dole* decision it issued in 1990, as well as to at least explain how *Collins*, *Dawes*, *Holden*, and *Saco River* are

incorrect as well as to maintain uniformity with Federal Law and respect for this Court's consistent and obvious finding that Form 1040 is a "tax form" issued by regulation subject to the public protection provided Petitioner by 44 U.S.C. § 3512(b)(1995).

2. The United States Tax Court is a "Court" within the meaning and application of the term "penalty" provided specifically by Congress pursuant to the definition of the term "penalty" in 44 U.S.C. § 3502(14)(1995).

The panel decision conflicts with Congress' words defining "penalty" at 44 U.S.C. § 3502(14)(1995) which includes within the definition of "penalty" "the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief..."

Petitioner claimed he could not be penalized by the IRS because the IRS had made request on a bootleg form. This Court noted in *Dole*, 494 U.S. 43 n.6 (1990) "The Act 'allow[s] the public, by refusing to answer these [information collection requests], to help control outlaw forms'".

The decision by the Panel held that "a petition for redetermination is not the proper forum to raise such a challenge."App. 8

The Panel decision clearly conflicts with the law because the United States Tax Court is a "Court" subject to hearing Paperwork Reduction Act of 1995 defense claims pursuant to the public protection provision, 44 U.S.C. § 3512(b)(1995), during the petition for redetermination stage of a Tax Court proceeding.

The decision to hold otherwise must be reversed by this Court to direct full compliance by the inferior courts established by Congress of this Court's mandate that the public protection may be raised in any court including the Tax Court as a Court.

3. A Petition filed in the United States Tax Court is a "judicial action" pursuant to 44 U.S.C. § 3512(b)(1995).

The Panel decision conflicts with the plain reading of the 1995 Paperwork Reduction Act which was enacted to strengthen the 1980 version. The current version reads:

> (a) Notwithstanding any other provision of law, **no person shall be subject to any penalty** for failing **to comply with a collection** of information that is subject to this subchapter if -
>
> > (1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or
> >
> > (2) the agency fails to inform the person who is to respond to the collection of information that

such person is not required to respond to the collection of information unless it displays a valid control number.

(b) **The protection provided by this section may be raised** in the form of a complete defense, bar, or otherwise **at any time during the agency administrative process or judicial action applicable thereto**.

There is no doubt the Notice of Deficiency issued on May 24, 2005 by the Secretary sought to subject Petitioner to penalties and interest as a penalty, subjecting those claims to the protection provided by section 3512.

Equally true is that the forum to which the request for redetermination is heard is the United States Tax Court. There can be no doubt that a Notice of Deficiency is a part of the "administrative process" as articulated by Congress at 26 U.S.C. § 6211, 6212, and 6213. Though the United States Tax Court is an Article I Court, see *Freytag v. CIR*, 501 U.S. 868, 870 (1991)("By the Tax Reform Act of 1969, § 951, 83 Stat. 730, 26 U.S.C. § 7441, Congress 'established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court.'"), it remains a "Court" none the less.

A petition for redetermination timely filed in the United States Tax Court clearly is a "judicial action" within the meaning of section 3512 and is a forum to which the public protections

must be allowed to be raised.

The decision by the Panel must be reversed to maintain the weight and authority the Constitution places within this Court regarding what a judicial action consist of and that Tax Court is considered by this Court to be an action that is judicial in nature and to which the public protection claims by Petitioner belongs within.

4. When the Commissioner of Internal Revenue makes a claim of penalties, including interest as a penalty, within a Notice of Deficiency for failure to provide information on its 1040 request against Petitioner, Petitioner should be allowed to raise the public protection provision, 44 U.S.C. § 3512(b)(1995) in defense to those penalty claims within the United States Tax Court.

At the heart of this issue is whether the 1040 request complies with the Paperwork Reduction Act of 1995. Section 3506(c)(1)(B) requires each request to be:

(i) inventoried, displays a control number and, if appropriate, an expiration date;

(ii) indicate the collection is in accordance with the clearance requirements of section 3507; and

(iii) informs the person receiving the collection of information of

(I) the reasons the information is being collected;

(II) the way such information is to be used;

(III) an estimate, to the extent practicable, of the burden of the collection;

(IV) whether the responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

(V) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number

The 1040 request for Calender Year 2003 tendered into evidence during the administrative process before the Tax Court clearly indicates said request fails to comply with any of the criteria required by both 44 U.S.C. §§ 3506(c)(1)(B) as well as 3512(a)(2)(1995).

The 1040 request is not inventoried, displays no expiration date other than an expired year[1], displays a number but certainly not valid. There is no clearance language from 3507, no reasons for the collection given, no statement of what they can do with the information you provide or how it will be used, no estimate of the burden, no voluntary or mandatory, and

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[1]IRS circulates their 1040 request in January of the year after the end of the previous calender year. If the year on the Form could satisfy the expiration date requirement, as a date, that year ended before the request was made with that date appearing on said request. Section 3507 mandates all requests expire within 3 years from when they are first requested.

no fact the IRS cannot sponsor a collection, nor does the public have to respond to a collection of information unless a valid control number issued in accordance with this "subchapter" is displayed on said request.

The decision by the 7th Circuit is also in conflict with the 10th Circuit's decision in *Pond v. CIR*, T.C. Memo 2005-255, WL 18928 decided 10911-02 (10th.1-4-07) which held that raising the public protection provided by Congress pursuant to 44 U.S.C. § 3512 in regard to the 1040 request was not a frivolous claim and could be adjudicated in Tax Court.

The Commissioner successfully convinced the Tax Court to impose an additional penalty upon Petitioner pursuant to 26 U.S.C. § 6673 in the amount of $ 3,000.00 based upon Petitioner raising the public protection provision as a defense against the Secretary's claims for penalties and interest as a penalty during the petition for redetermination stage of a Notice of Deficiency administrative process. The granting of this penalty/sanction was simply ridiculous.

The Commissioner did not appeal the decision by the 10th Circuit in *Pond* and thus agreed the Supreme Court in *Dole* held request forms such as the 1040 are subject to the Paperwork Reduction Act of 1995. See *Pond* supra To go from accepting the 10th Circuit's decision in *Pond*, which was an appeal of a similar tax court decision to the one issued against Petitioner

herein, to finding Petitioner should be sanctioned for raising the protected claim, demonstrates the total lack of respect for this Court's decisions, other Circuits' decisions, as well as the elected Congress' words written, imbedded within the Secretary of the Treasury representatives and those who represent the Commissioner of the Internal Revenue.

The decision by the 7th Circuit to uphold the imposition of penalties and interest claims made by the Commissioner of Internal Revenue against Petitioner, including frivolous penalties for raising the protection provided by 44 U.S.C. § 3512, pursuant to 26 U.S.C. § 6673, conflicts with this Court's ruling in *Dole v. United Steelworkers*, 494 U.S. 26 (1990) which held "the grammar of this text can be faulted, its meaning is clear: the public is protected under the Paperwork Reduction Act from paperwork regulations not issued in compliance with the Act." *Id.* at 40

There is simply no other way to see the Panel decision. It was incorrect and clearly erroneous to uphold the decision by the Tax Court in regard to the Paperwork Reduction Act defense claims as well as the affirmance of the § 6673 $3,000.00 penalties.

5. It was clearly an abuse of the power and clearly erroneous to impose penalties/sanctions to penalize Petitioner $8,000.00 for appealing the decision by the Tax Court who ruled against Petitioner's Paperwork Reduction Act defense claims as frivolous.

The Panel decision to impose an $ 8,000.00 penalty upon Petitioner for advancing on appeal Petitioner's disagreement with the United States Tax Court's decision which held the Paperwork Reduction Act claims of protection made by Petitioner, during the redetermination administrative process, frivolous on the conclusion the Paperwork Reduction Act does not apply to the information requests made by the Internal Revenue Service, is simply and clearly abusive and erroneous.

It is equally error for the Panel to say that the claims made by Petitioner have been "rejected by every court to consider it on the ground the PRA does not alter the statutory requirement to file an income tax return." App. 7

This Court in *Dole* did not reject that application. The 10th Circuit in *Dawes* did not reject that application. The 8th Circuit in *U.S. v. Holden*, 963 F.2d 1114 (8th Cir. 1992) did not reject it. The 10th Circuit in *Pond* did not reject it. The 10th in *U.S.v. Collins*, 920 F.2d 619, 631 (10th Cir. 1990)(overruling its decision in *United States v. Tedder*, 787 F.2d 540, 542 (10th Cir. 1986)

As argued above, the 1040 request does not comply with

the Paperwork Reduction Act of 1995 (nor 1980 back then), the redetermination phase of a Notice of Deficiency fits squarely within the "administrative process or judicial action applicable thereto" language of section 3512(b)(1995), the Tax Court is a "court" within the meaning of the term "penalty" articulated within section 3502(14)(1995), and no person, including Petitioner, can be subject to any penalty unless the request displays a valid OMB control number issued in accordance with "this subchapter." Section 3506(c)(1)(B) is clearly within that "subchapter" to which list the criteri the director is to ensure each request for information contains and to which each request clearly does not.

The additional penalty imposed by the 7th Circuit should be treated equally to any other penalty and as such should be subject to the Paperwork Reduction Act of 1995 in making a determination as to the frivolousness advanced by the Panel in its decision. The Panel decision is in opposition to the Panel decision by the 10th Circuit in Pond which held raising the public protection provision in defense against penalty claims made by the Commissioner was not frivolous.

The Panel's imposition of $ 8,000.00 against Petitioner should be reversed with reconsideration on Petitioner's Motion for Sanctions against the Commissioner for telling the public they do not have to provide information unless the Form 1040

complies with the Paperwork Reduction Act of 1995 and then when the public raises the Commissioner's words as a defense, the Commissioner claims the Paperwork Reduction Act of 1995 does not apply.

For even more outrageous positions, see Revenue Ruling 2006-21, dated April 10, 2006, which continues to quote from the 1980 Paperwork Reduction Act and ignores the fact Congress enacted the Paperwork Reduction Act of 1995.

CONCLUSION

For the reasons stated herein, Petitioner respectfully request this Court issue a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit addressing the division between this Court's decision in *Dole v. United Steelworkers,* and the Seventh Circuit this case and the decision in Salberge, reversing its decision in this case with direction that Form 1040 is subject to the Paperwork Reduction Act of 1995, and was subject to the 1980 Act, as well as the public protection applies at any time, including in Tax Court, Federal Court, whether raised as a Plaintiff, Petitioner on the defense, or in any other capacity. If a information collection request is at issue in any Court it is that Court which must address the Paperwork Reduction Act claims made in that case at that time.

Respectfully Submitted

/s/ Brian Hilvety

UNITED STATES TAX COURT
WASHINGTON, DC 20217

BRIAN HILVETY,
Petitioner,

v. Docket No. 15955-05

C.I.R.,
Respondent.

ORDER OF DISMISSAL AND DECISION

This case is before the Court on respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and to Impose a Penalty Under I.R.C. Section 6673, filed September 22, 2005. A hearing was conducted on respondent's motion in Washington, D.C., on November 2, 2005. Counsel for respondent appeared and presented argument in support of the motion to dismiss. Petitioner submitted a written statement, filed October 31, 2005, in lieu of attendance at the hearing. [1]

On May 24, 2005, respondent issued to petitioner a notice of deficiency for the taxable year 2003. In that notice, respondent determined a deficiency in petitioner's 2003 Federal

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[1]Section references are to sections of the Internal Revenue Code, as amended. Rule references are to the Tax CourtRules of Practice and Procedure, available at www.ustaxcourt.gov

income tax and imposed additions to tax.[2] The deficiency is based upon petitioner's failure to report wages that he received during the year in issue.

Petitioner filed a timely petition contesting the deficiency determined in the above-referenced notice of deficiency.[3] The petition contains nothing but frivolous and groundless arguments. By order dated September 23, 2005, petitioner was directed to [**PAGE 1 ENDS**] file a proper amended petition setting forth with specificity each error allegedly made by respondent in the determination of the deficiency and separate statements of every fact upon which the assignments of error are based, but he has failed or refused to do so.

Rule 34(b) (4) requires that a petition filed in this Court contain clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiencies and the additions to tax and/or penalties in dispute. Rule 34(b) (5) further requires that the petition contain clear and concise lettered statements of the facts on which the taxpayer bases the

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[2]Respondent now concedes that petitioner is not liable foran addition to tax under sec. 6651(a) (2) for the year in issue

[3] Petitioner resided in Moweaqua, Illinois, at the time thepetition was filed

assignments of error. See Jarvis v. Commissioner, 78 T.C. 646, 658 (1982).

The petition filed in this case does not satisfy the requirements of Rule 34(b) (4) and (5). There is neither assignment of error nor allegation of fact in support of any justiciable claim. Rather, the petition contains nothing but frivolous and groundless arguments. Under the circumstances, we see no need to catalog petitioner's arguments and painstakingly address them. As the Court of Appeals for the Fifth Circuit has remarked: "We perceive no need to refute these arguments with 'somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit".Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984).

Because the petition fails to state a claim upon which relief can be granted, so much of respondent's motion as seeks dismissal will be granted. See Scherping v. Commissioner, 747F.2d478 (8thCir. 1984); Rules 34(a)(1), 123(b).Respondent's motion to dismiss includes a request for the imposition of penalty on petitioner pursuant to section6673 (a) (1). Section 6673 (a)(l) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of $25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in

such proceeding is frivolous or groundless. Petitioner is no stranger to the Court. Petitioner previously filed a frivolous petition with the Court at docket No. 20557-03. In that case, the Court imposed a penalty on petitioner pursuant to section 6673(a) (1) in the amount of $5,000. On this record, we are convinced that petitioner instituted and maintained this proceeding primarily for delay. Petitioner's position in this case was patently frivolous and groundless. Accordingly, we will impose a penalty upon petitioner pursuant to section 6673 (a) (1). [**PAGE 2 ENDS**]

Upon due consideration and for cause, it is hereby. ORDERED that respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted and to Impose a Penalty Under **I.R.C.** Section 6673, filed September 22, 2005, is granted.

It is further ORDERED that this case is dismissed on the ground that the petition fails to state a claim upon which relief can be granted.

It is further ORDERED AND DECIDED that there is a deficiency of $3,419 in petitioner's 2003 Federal income tax, an addition to tax under section 6651(a) (1) of $761.63, and no addition to tax under section 6651 (a) (2_). It is_ further ORDERED AND DECIDED that pursuant to section 6673(a) (1), petitioner is liable for a penalty of $3,000.

(Signed) Lewis **R.** Carluzzo

Special Trial Judge

ENTERED: NOVEMBER 16, 2005 [**PAGE 3 ENDS**]

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted February 14, 2007*

Decided February 14, 2007

Before

Hon. MICHAEL S. KANNE, *Circuit Judge*

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

Hon. DIANE S. SYKES, *Circuit Judge*

No. 06-1525

BRIAN L. HILVETY
Petitioner-Appellant,

v.

C.I.R.
Respondent-Appellee.

Appeal from the United States Tax Court
No. 15955-05

ORDER

Brian Hilvety filed a petition in the United States Tax Court for redetermination of a tax deficiency and additions to tax assessed by the Commissioner of Internal Revenue after he failed to file an income tax return for the year 2003. In the petition Hilvety argued that the Commissioner's actions were invalid because, he asserted, certain relevant forms lacked valid

OMB control[1] [**PAGE 1 ENDS**] numbers as required by the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq*. The Commissioner moved to dismiss the petition for failure to state a claim. Rather than grant the motion, the court ordered Hilvety to amend his petition to conform with the rules requiring him to set forth with specificity the alleged errors in the calculation of his deficiency and facts supporting his position. *See* Tax Ct. R.34(b)(4)-(5). When Hilvety failed to amend his petition, the court granted the motion to dismiss, concluding that Hilvety raised "nothing but frivolous and groundless arguments." The court also upheld the amount of the deficiency—as modified in Hilvety's favor by the Commissioner—and imposed a penalty of $3,000 on Hilvety for instituting frivolous proceedings in Tax Court, *see* 26 U.S.C.§ 6673(a)(1) .

On appeal Hilvety reiterates his argument that he is not liable for his tax deficiency because various forms used by the Internal Revenue Service displayed invalid control numbers. This argument, raised more often as a defense to criminal prosecutions for tax evasion, has been rejected by every court to consider it on the ground that the PRA does not alter the

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[1] After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* Fed. R. App. P. 34(a)(2).

statutory requirement to file an income tax return. *See Salberg v. United States*, 969 F.2d 379, 384 (7th Cir. 1992); *United States v. Neff*, 954 F.2d 698, 699-700 (11th Cir. 1992); *United States v. Hicks*, 947 F.2d 1356, 1359 (9th Cir. 1991); *United States v. Dawes*, 951 F.2d 1189, 1193 (10th Cir. 1991). The frivolousness of his argument aside, the dismissal of Hilvety's petition was proper because he failed to allege any error in the assessment of his deficiency. Other than baldly asserting that the deficiency was "erroneous and in dispute," he did not point to any mistakes in the Commissioner's calculation even when the court gave him a second chance to do so. Indeed, Hilvety's quarrel is not with the amount of the deficiency assessed by the Commissioner but with his obligation to acquiesce to the IRS's use of what he characterizes as "bootleg" forms. But a petition for redetermination is not the proper forum to raise such a challenge. *See* Tax Ct. R. 34(b). Accordingly, we affirm the decision of the Tax Court dismissing the petition and imposing a $3,000 penalty under § 6673(a)(1).

Both parties have asked us, via separately filed motions, to impose sanctions on the other. The Commissioner moves for sanctions against Hilvety in the amount of $8,000 for filing a frivolous appeal. *See* 26 U.S.C. §7482(c)(4); Fed. R. App. P. 38. We have set $4,000 as the presumptive amount of sanctions for filing a frivolous appeal in a tax case, subject to doubling in

cases where the appeal is filed by a repeat offender. *Szopa v. United States*, 460 F.3d 884, 887 (7th Cir. 2006). Hilvety is no stranger to frivolous tax litigation: only last year we lifted a filing bar we imposed on him in 2001 under *Support Systems International v. Mack*, 45 F.3d 185 (7th Cir. 1995), in connection with his other frivolous tax appeals. *See Hilvety v. CIR*, 21 F. App'x 475 (7th Cir. 2001) (unpublished decision). Hilvety appears determined to burden the courts with frivolous arguments, and so we GRANT the Commissioner's motion for sanctions in the amount of $8,000. For his part, Hilvety requests that we impose a sanction of $16,000 on the Commissioner for his continued **[PAGE 2 ENDS]** violation of the PRA and his "false and misleading" arguments in this court. We discern no basis for granting Hilvety's request, *see* Fed. R. App. P. 38,and we therefore DENY his motion.

AFFIRMED. **[PAGE 3 ENDS]**

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

June 15, 2007

Before

Hon. MICHAEL S. KANNE, *Circuit Judge*

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

Hon. DIANE S. SYKES, *Circuit Judge*

No. 06-1525

BRIAN L. HILVETY,
Petitioner-Appellant,

v.

C.I.R.
Respondent-Appellee.

Appeal from the United States Tax Court
No. 15955-05

ORDER

No Judge of the court having called for a vote on the Petition for Rehearing and Rehearing En Banc filed by Petitioner-Appellant on April 17, 2007, and all of the judges on the original panel having voted to deny the same,

IT IS HEREBY ORDERED that the Petition for Rehearing and Rehearing En Banc is DENIED.